



Department of Veterans Affairs

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THE VETERANS APPEALS PROCESS

February 28, 2014



U.S. Department
of Veterans Affairs

Purpose of Briefing

1. Overview of VA appeals process.
2. Overview of current legal framework for the appeals process.
3. Appendix.

VA's Appeals Structure

What can be appealed?

Any decision made by VA on a benefit claim (disability; healthcare; cemetery) can be appealed for any reason.

Fact: 72% of Veterans in the current appeal process are receiving payment of VA compensation benefits

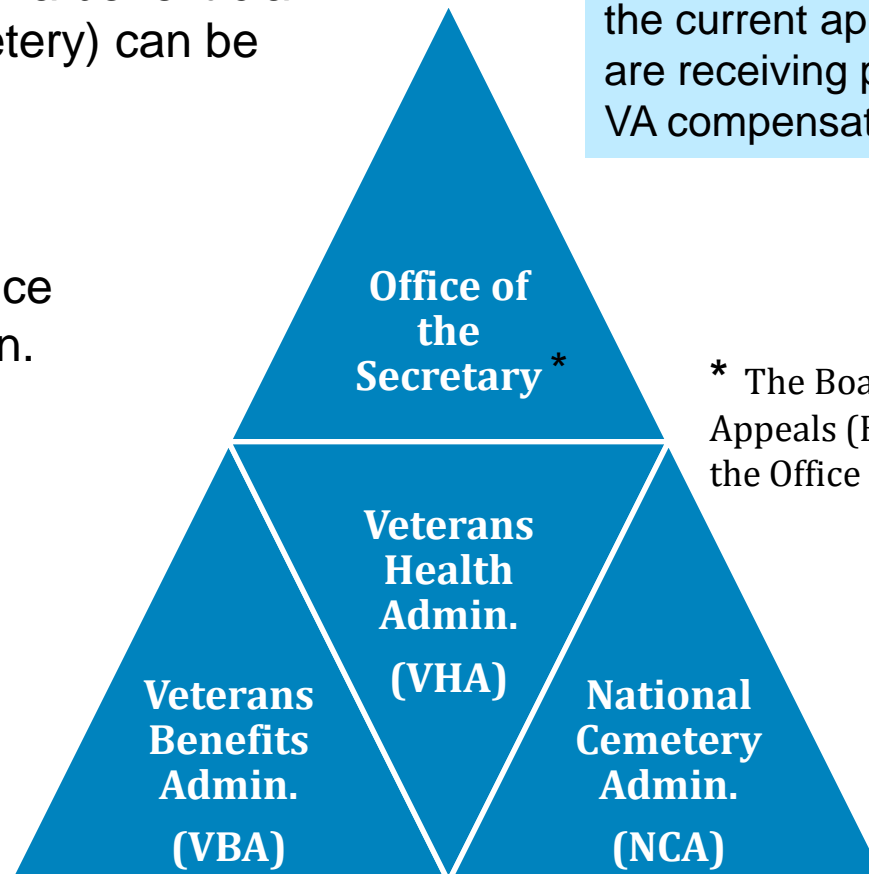
Where do appeals begin?

Appeals begin at the VA office that made the initial decision.

- 96% VBA
- 4% VHA, NCA, other

How does it work?

Since 1933, the appeals process, which is set in law, has grown in complexity, with a continuous open record leading to many repeat decisions in VA.

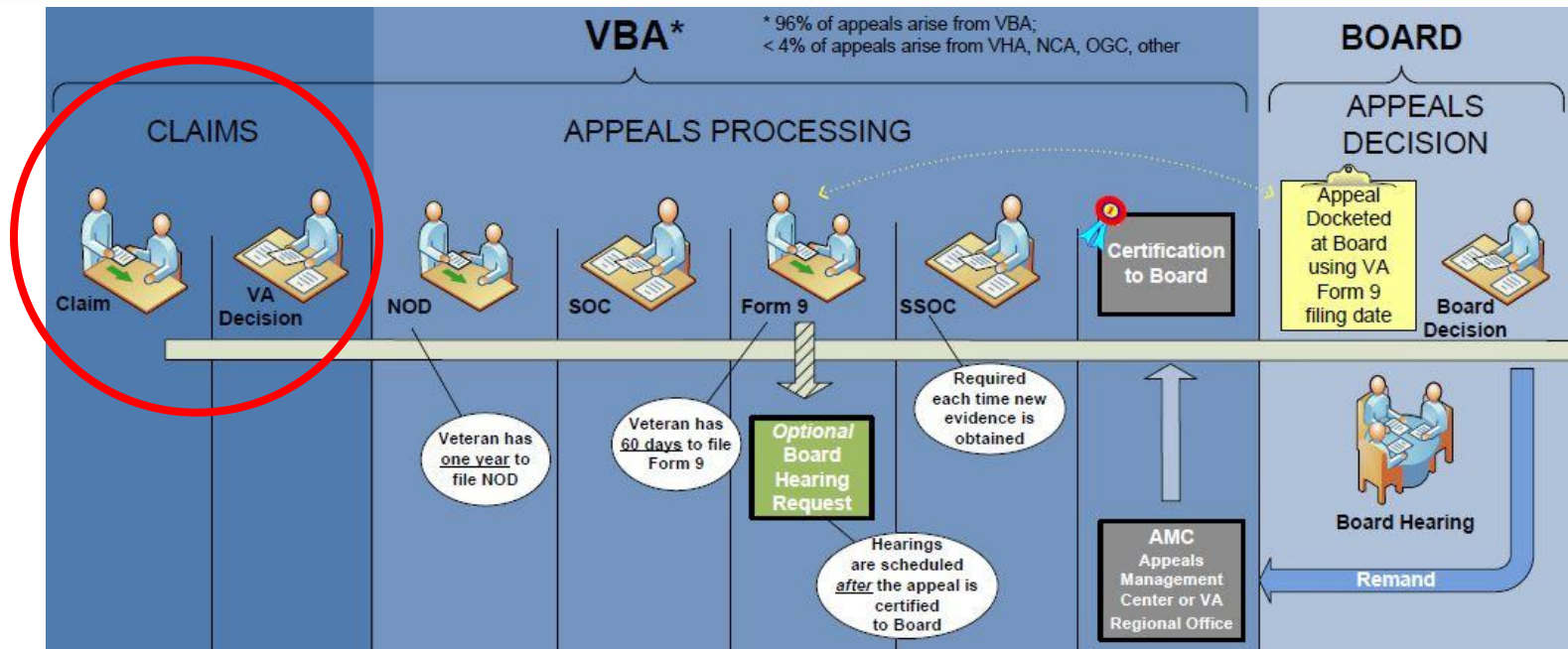


* The Board of Veterans' Appeals (Board) reports to the Office of the Secretary.

Appeals at a Glance

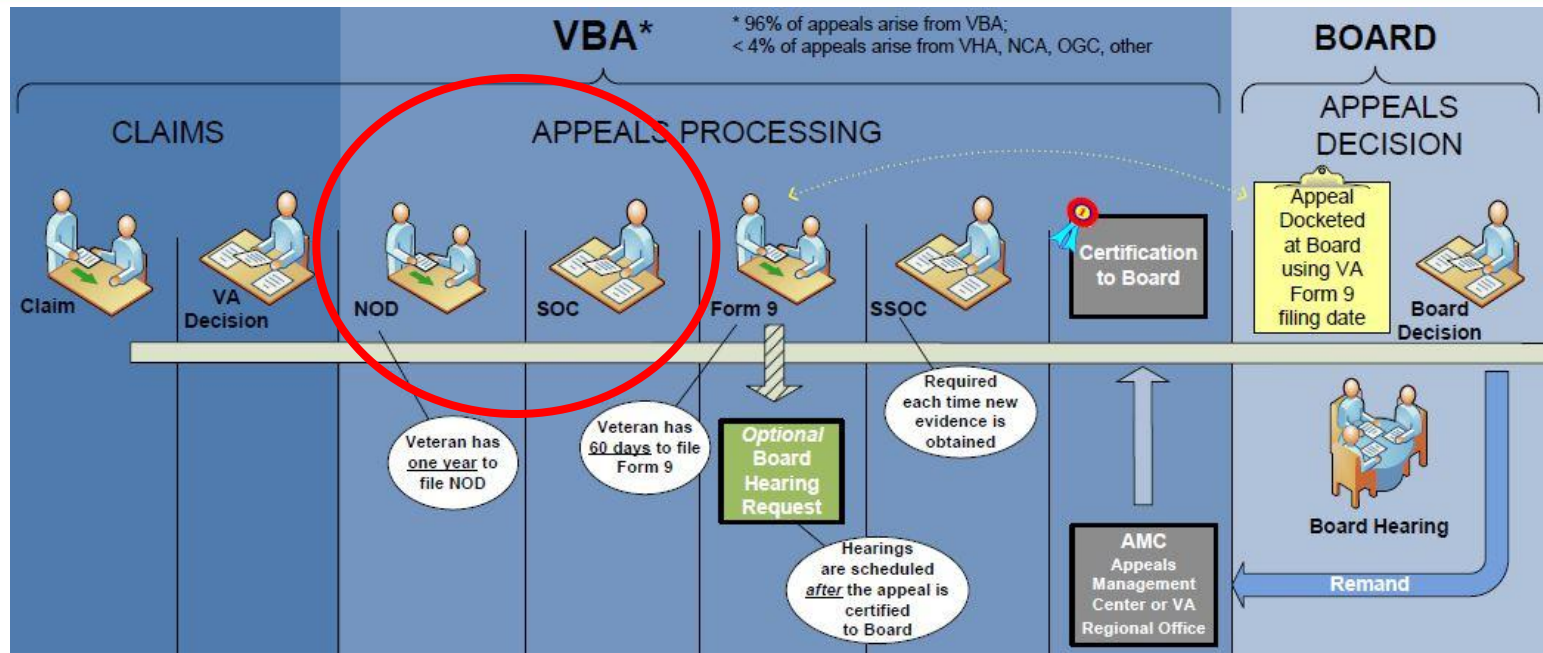
- **Right to Appeal.** Veterans, dependents of Veterans, and survivors of Veterans have a **right to appeal** any aspect of a VBA claims decision.
- **One Year to Appeal.** Veterans have **one full year** to decide whether they wish to file an appeal of a VBA claims decision. On average, only between 11 and 12 percent of all VA's claims decisions are appealed – a rate that has held steady over the past 20 years, irrespective of rates of quality or production.
- **Multi-staged VA Appeals Process.** The appeals process is a complex, multi-stage, non-linear process set in law that has evolved over decades, with a **continuous open record** that allows submission of new evidence (medical records, statements, etc.) at any time. Each submission of evidence requires a new cycle of review and decision making.
- **Board Review.** The Board conducts a **de novo (new) review** of the entire case, without deference to the VBA decision and looking at an evidentiary record that has dramatically changed from the time of the initial decision.

Life Cycle of an Appeal: Where an Appeal Begins



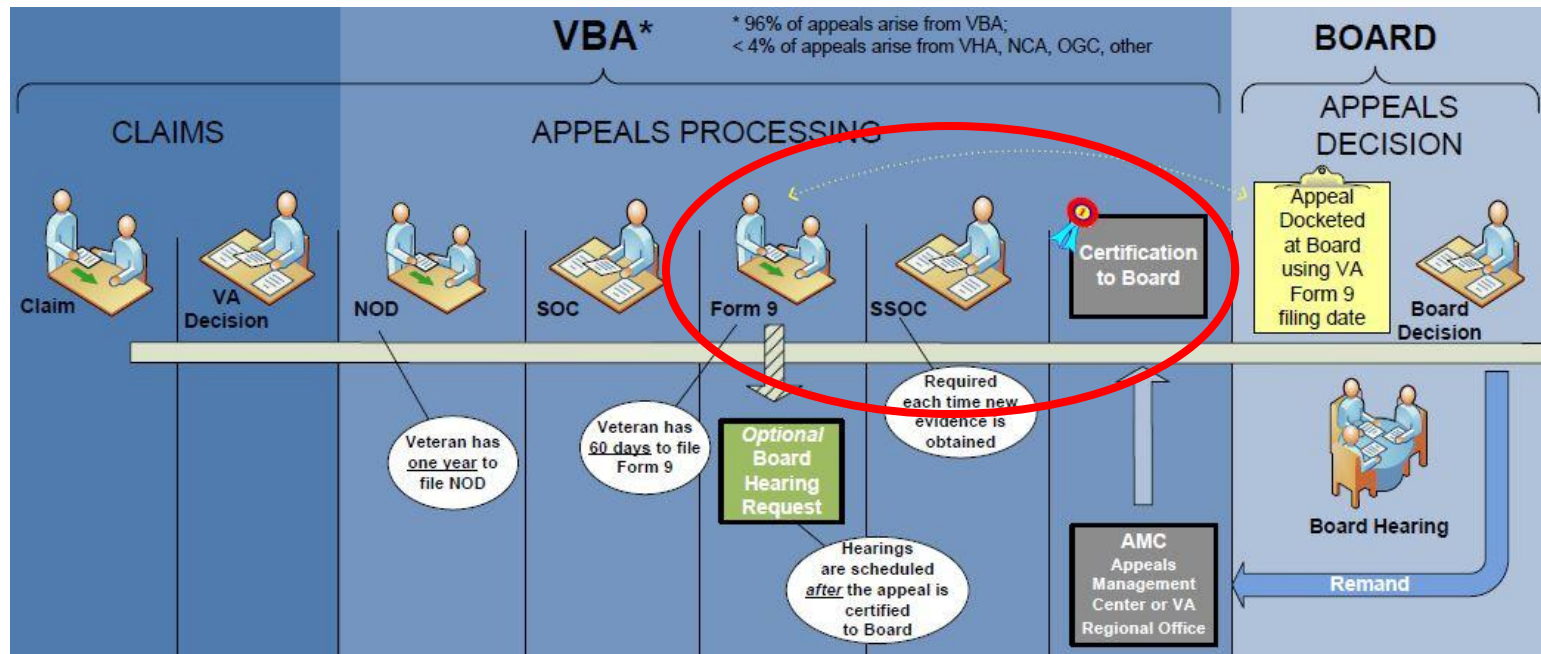
- **Claim Filed:** A claim for disability compensation is filed at VBA.
- **Claims Decision:** VBA completes a claims decision, called a “**Rating Decision**.”
 - VA has completed more than a million claims in each of the past 4 years, and in FY ‘13 *completed a record 1.17 million claims!* Accuracy has increased to over 97% percent on individual medical issues.
 - More than 100,000 Veterans are currently receiving decisions on their claims each month, with grant rates at 65%, which is on par with historical averages.

Life Cycle of an Appeal: Notice of Disagreement to Statement of the Case



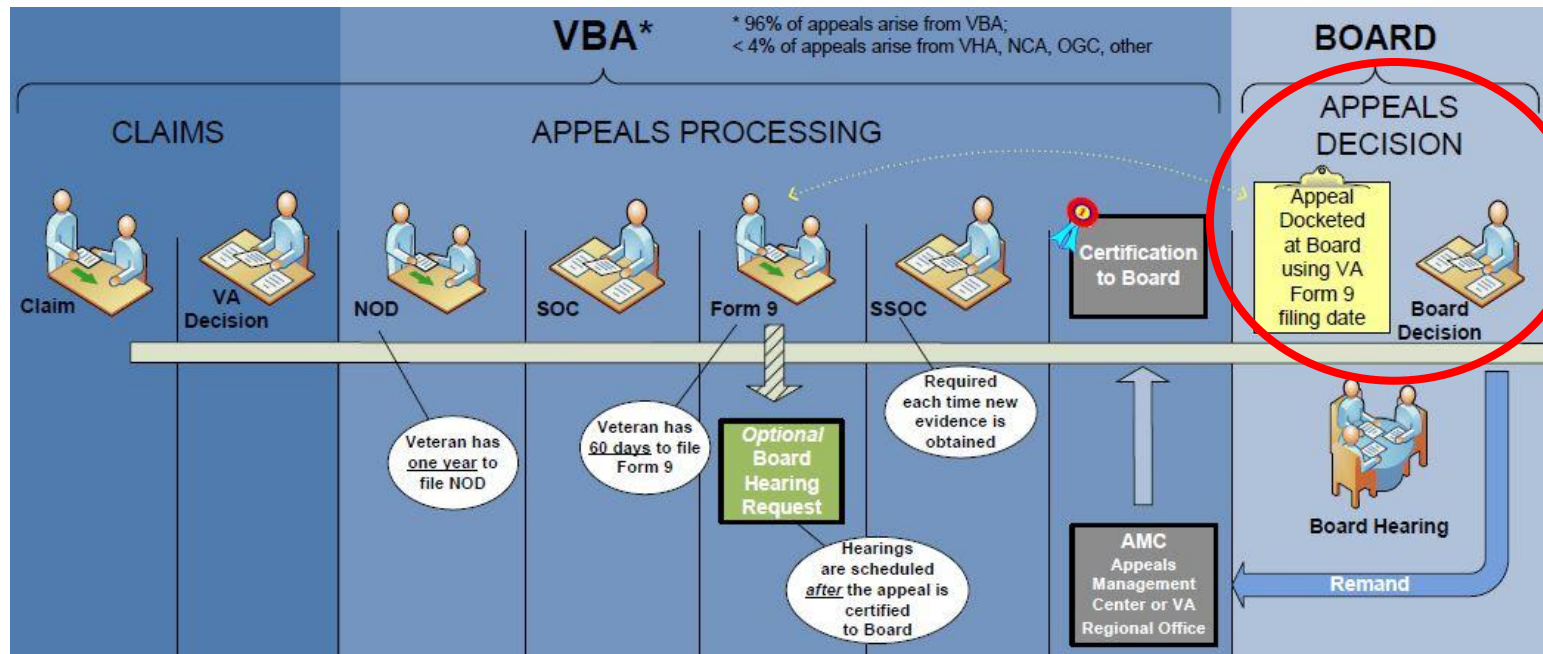
- **Appeal Starts:** An appeal is initiated by the Veteran filing a “Notice of Disagreement” (NOD) at VBA.
 - Veterans have an *unqualified right to appeal* any aspect of a claims decision, and they have a full year to decide whether they wish to appeal. On average, only between 11 and 12 percent of all VA’s claims decisions are appealed – a rate that has held steady over the past 20 years, irrespective of rates of quality or production.
 - Approximately 72% of appeals are from Veterans who are already receiving VA disability compensation payments and are seeking either a higher level of compensation or payment starting from an earlier date.
 - The largest number of appeals are generated by Vietnam era veterans, not recent OIF/OEF.
- **New Decision by VBA:** When VBA receives an NOD, VBA reviews the record again, incorporating any new evidence provided or gathered, and issues a “Statement of the Case” (SOC), which includes a summary of the evidence in the case, a citation to pertinent laws and regulations, and a discussion of the reasons for the decision.

Life Cycle of an Appeal: Form 9 to Certification



- **Formal Appeal:** If a Veteran is *dissatisfied* with any aspect of the Statement of the Case, the Veteran may file a formal appeal at VBA, called a “**Substantive Appeal**” (most use optional VA Form 9).
- **Continuous Open Record Triggers Additional Decision(s) by VBA:** The open record permits new evidence at any time. Generally, the law requires that each time new evidence is obtained in an appeal, VBA must issue a “**Supplemental Statement of the Case**” (SSOC).
- **Transfer of Appeal to the Board:** Less than half of appealed decisions are “**Certified**” and transferred to the Board for a final agency decision.

Life Cycle of an Appeal: Receipt at Board to Decision



Only 4-5% of VBA decisions continue on appeal to the Board:

- This rate has remained steady over the past 20 years, even as VA has substantially increased the number of claims completed.

Optional Board Hearing: Approximately 25% of Veterans whose appeals reach the Board request a formal hearing before a Veterans Law Judge to discuss their appeal and present new evidence.

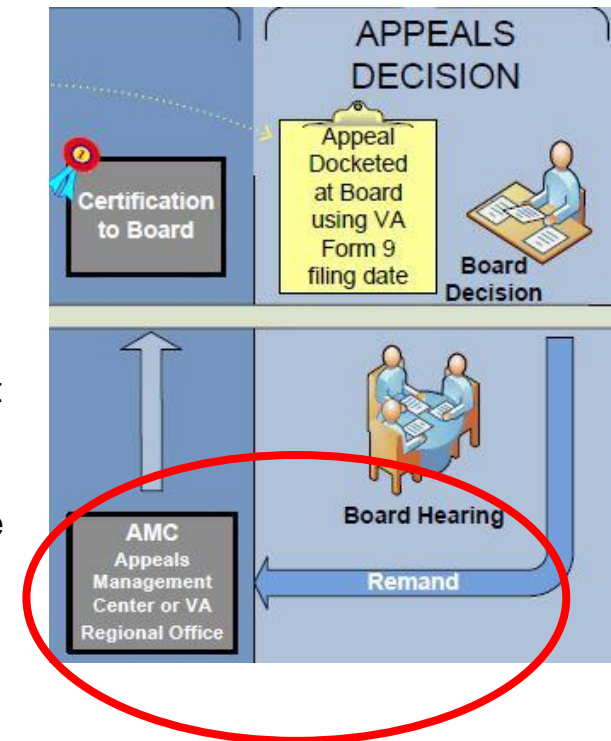
De Novo Review: Unlike a traditional appeals process, the Board takes a fresh look at all the evidence of record without deference to VBA's decision.

Final Decision: Board Veterans Law Judges make a final decision on appeal on behalf of the Secretary.

Life Cycle of an Appeal: Remand to VBA Appeals Management Center (AMC)

Continuous Open Record Triggers Board Remand:

- The Board accepts new evidence by the Veteran at any time, and must also gather new evidence identified or discovered by the Veteran.
- By law, the Board generally must remand (send back) the appeal to VBA (via the Appeals Management Center) to review or gather any new evidence that can influence the appeal.
- A **remand starts the cycle all over**. A new decision is made by VBA on that new evidence, and unless the full appeal is granted, it is recertified back to the Board for decision.
- On appeal to the Board, the law generally requires that each piece of evidence be reviewed twice – first by VBA and then by the Board.
- Most common reasons for remand include:
 - Gathering new evidence identified or discovered by the Veteran; or,
 - Scheduling a new medical examination to clarify the current state of disability.



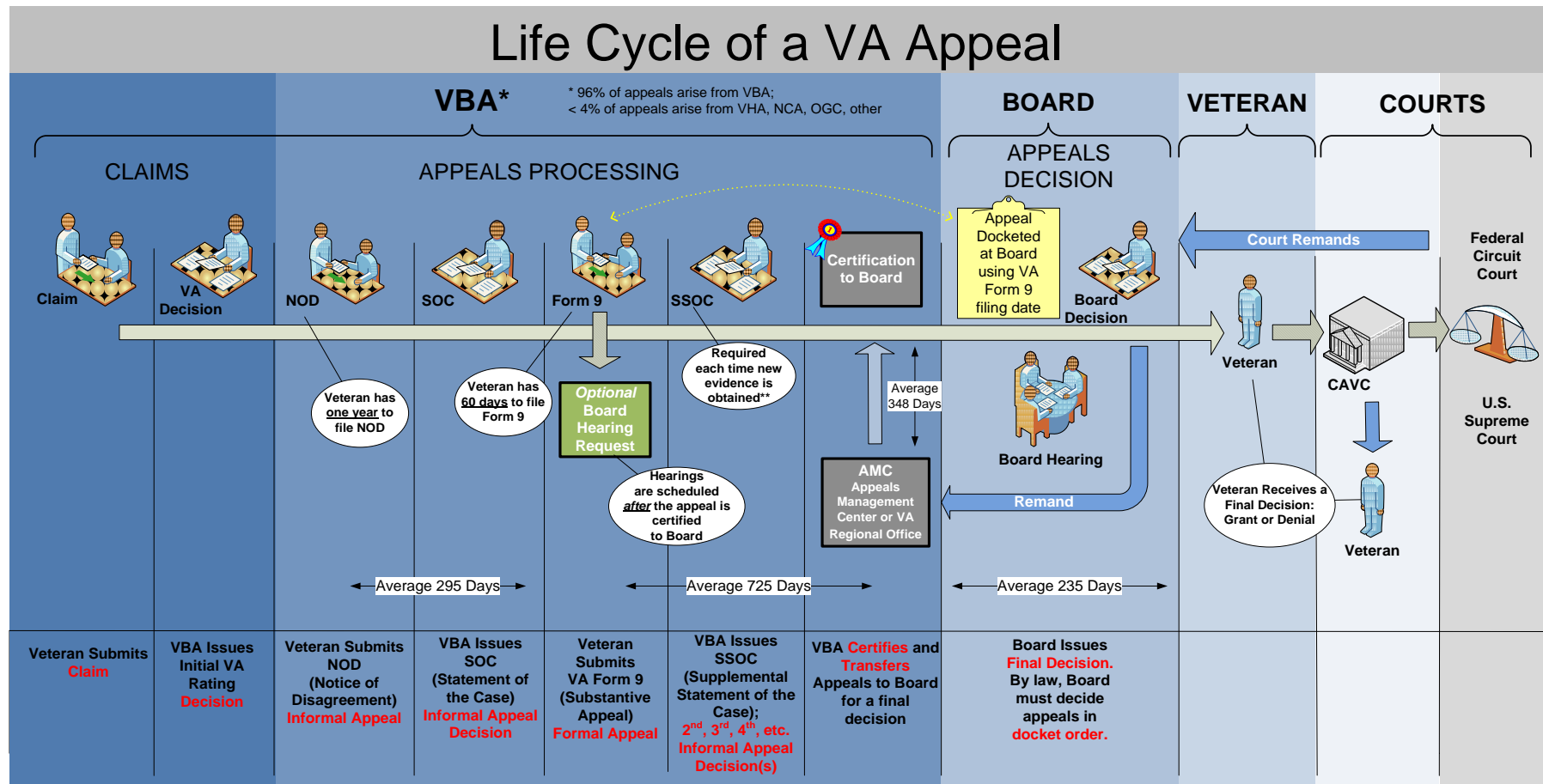
Appeals Process: Why Does it Take so Long?

- ***Continuous open record welcomes new evidence to be submitted at any time.***
 - There is no requirement to submit all evidence early in the process.
 - New evidence generally **requires a new decision every time**.
 - This differs from a traditional appeals process where the record is closed at the time of the initial decision.
- ***Medical disabilities are dynamic.***
 - VA is obligated to evaluate the Veteran's **most current disability picture**, which is constantly evolving (e.g. ongoing medical treatment; worsening or improvement in severity), leading to a continuous process of gathering new evidence.
 - Varying treatment records and opinions between different physicians (private and VA) require full consideration by VA.
- ***Complex, non-linear appeals process accumulated over 80 years is set in law and requires multiple layers of review.***
 - Appeals do not proceed in a sequential fashion to a set end. **The length of the process depends substantially on the number of cycles of redevelopment and readjudication that are triggered.**

Note: *As more claims have been completed over the past 5 years, more appeals have emerged at a steady proportionate rate (11-12% of VBA claims completed).*

APPENDIX:

Life Cycle of a VA Appeal (FY 2013)



** In FY 2013, an appeal in which VBA issued only one supplemental SOC took, on average, 562 days to complete. Thereafter, each additional supplemental SOC added, on average, more than 200 days to the total appeal processing time.

APPENDIX:

Evolution of the Appeals Process

